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ATTORNEYS FOR PLAINTIFF
B&G FOODS NORTH AMERICA, INC.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

B&G FOODS NORTH AMERICA, INC.,

Plaintiff,

v.

KIM EMBRY and ENVIRONMENTAL
HEALTH ADVOCATES, INC., acting as
enforcement representatives under California
Proposition 65 on behalf of the State of
California,

Defendants.

Case No. 2:20-cv-00526-KJM-DB

**B&G FOODS NORTH AMERICA,
INC.'S NOTICE OF HEARING RE
DISCOVERY DISAGREEMENT AND
MOTION TO COMPEL**

Date: December 13, 2023

Time: 10:00 a.m.

Magistrate Judge: Hon. Deborah Barnes
Courtroom: 27

SAC Filed: November 23, 2022

Trial Date: None Set

NOTICE OF MOTION**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on December 13, 2023 at 10:00 a.m. in Courtroom 27 of the United States District Court, Eastern District of California, located at 501 I Street, Sacramento, CA 95814, a hearing will be held on the discovery disagreement between Plaintiff B&G Foods North America, Inc. (“B&G Foods”) and Defendants Environmental Health Advocates, Inc. (“EHA”) and Kim Embry (collectively, “Defendants”). The matters for the hearing include: (1) whether Defendants should be compelled to provide full and complete responses to B&G Foods’s Requests for Production Nos. 3 and 14–16, including documents relating to their orchestration of sham Proposition 65 litigation, their pre-suit investigation of affirmative defenses, and their representation that this action was filed in the public interest; (2) whether Defendants should be compelled to provide full and complete responses to B&G Foods’s Interrogatories Nos. 4–6 and 9–10, relating to Defendants’ investigation of affirmative defenses, Defendants’ preservation of evidence, and persons or entities Defendants contacted regarding their complaints; (3) whether Defendants should be compelled to provide a full and complete response to B&G Foods’s Request for Admission No. 2, regarding Defendants’ preservation of evidence; (4) whether Defendants should be compelled to provide a privilege log; (5) whether Defendants should be compelled to name themselves as custodians and produce all ESI responsive to B&G Foods’s proposed search terms, including terms relating to preservation of evidence, Defendants’ investigation of affirmative defenses, and Defendants’ representation that it brings Proposition 65 actions in the public interest; and (6) whether Defendants should be compelled to designate a corporate deponent for Topics Nos. 5, 11–15, 17, 18, 20–22, 24, relating to EHA’s investigation of affirmative defenses, representation that it brings Proposition 65 actions in the public interest, and the identity of and relationship with persons who assisted EHA in bringing these claims.

PLEASE TAKE FURTHER NOTICE that pursuant to Federal Rule of Civil Procedure Rule 37, B&G Foods will seek monetary sanctions against Defendants.

The specifics of the parties’ dispute and the parties’ respective contentions are detailed in the forthcoming Joint Statement.

1 Dated: November 20, 2023

Respectfully submitted,

2 BRAUNHAGEY & BORDEN LLP

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4 By: s/Matthew Borden
Matthew Borden

5 *Attorneys for Defendant*
6 *B&G Foods North America, Inc.*

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MOTION TO COMPEL

Plaintiff B&G Foods North America, Inc. (“B&G Foods”) hereby moves the Court for an order (1) compelling Defendants Environmental Health Advocates, Inc. (“EHA”) and Kim Embry (collectively, “Defendants”) to provide full and complete responses to B&G Foods’ Requests for Production Nos. 3 and 14–16, including documents relating to their orchestration of sham Proposition 65 litigation, their pre-suit investigation of affirmative defenses, and their representation that this action was filed in the public interest; (2) compelling Defendants to provide full and complete responses to B&G Foods’s Interrogatories Nos. 4–6 and 9–10, relating to Defendants’ investigation of affirmative defenses, Defendants’ preservation of evidence, and persons or entities Defendants contacted regarding their complaints; (3) compelling Defendants to provide a full and complete response to B&G Foods’s Request for Admission No. 2, regarding Defendants’ preservation of evidence; (4) compelling Defendants to provide a privilege log; (5) compelling Defendants to name themselves as custodians and produce all ESI responsive to B&G Foods’s proposed search terms, including terms relating to preservation of evidence, Defendants’ investigation of affirmative defenses, and Defendants’ representation that it brings Proposition 65 actions in the public interest; and (6) compelling Defendants to designate a corporate deponent for Topics Nos. 5, 11–15, 17, 18, 20–22, 24, relating to EHA’s investigation of affirmative defenses, representation that it brings Proposition 65 actions in the public interest, and the identity of and relationship with persons who assisted EHA in bringing these claims.

B&G Foods further requests this Court issue monetary sanctions in the amount of \$9,625.00.

The Motion is based on the forthcoming Joint Statement regarding Discovery Disagreement and supporting papers and the entire record herein.

1 Dated: November 20, 2023

Respectfully Submitted,

2 BRAUNHAGEY & BORDEN LLP

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4 By: s/Matthew Borden

5 Matthew Borden

6 *Attorneys for Plaintiff*

7 *B&G Foods North America, Inc.*